

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**GMM, A MINOR CHILD
BY HIS MOTHER AND NATURAL GUARDIAN,
NIKI HERNANDEZ- ADAMS, AND
NIKI HERNANDEZ-ADAMS, INDIVIDUALLY**

13-CV-05059(JBW)(SMG)

**DEFENDANT'S
ANTICIPATED
WITNESS
TESTIMONY**

Plaintiffs,

-against-

MARK KIMPSON

Defendant,

-----X

Trial Witnesses Testimony (Brief)

1. Defendant Mark Kimpson

He will testify, among other things, to the following: that he bought the building, 490 MacDonough Street, Brooklyn, NY 11233 in 2011; performed the gut renovation; applied new sheet rock on the walls; painted the sheetrock with one coat of primer and two coats of paint; upgraded the electrical and plumbing systems; installed new hardwood floors; covered all old plaster and lead paint; painted the moldings with one coat of primer and two coats of paint; and installed new kitchens and bathrooms. He will further testify that the Plaintiffs moved in after all the renovation was completed; that the Plaintiffs had two dogs in the apartment; that after the Plaintiffs moved out, he noticed that the dogs scratched several of the walls and molding; and that the scratching damaged same to the extent that it exposed the previously-encapsulated paint, which thereby exposed lead-paint throughout the apartment.

2. **Arthur A. Morales, Certified Lead Paint Tester**

He will testify, among other things to the following: that he performed a lead-paint test on the property located at 490 MacDonough Street, Brooklyn, NY 11233 and that the positive readings obtained were the result of the XRF device “reading thru” the drywall (sheetrock) material to the painted surface that is covered, which may result in inaccurate readings. He will further testify that complete enclosure with drywall material is an acceptable measure of lead-paint exposure abatement and that the lead paint does not pose health hazards unless the paint is disturbed by friction, poor cleaning, or scratching like that done by a dog.

3. **Freddie M. Marton, MD., Neurologist**

He will testify, among other things, to the following: that the infant, has no focal neurological deficits and no abnormalities.

4. **Dominick Auciello, Ph.D., Neuropsychological Expert**

He will testify, among other things, to the following: that he performed neurological testing on the infant, G.M.M., on May 1, 2015; that the results showed that he may have significant exposure to general anesthesia and hydrocodone in utero, and jaundice and serious otitis media during early infancy, all of which are known to cause cognitive deficits in young children similar to the cognitive deficits present in the infant plaintiff, G.M.M.; that G.M.M.’s overall cognitive development, memory, visual abilities, adaptive functioning, are all in the Low Average range, which contrasts sharply with the results of Plaintiff’s expert, Dr. Robert Gordon, whose testing places G.M.M. at the Extremely Low range. He will further testify that G.M.M.’s language development and motor skills development are

normal; that G.M.M. does not meet the criteria for specific diagnosis of AD/HD or Oppositional Defiant Disorder; and that he would recommend speech-language therapy and behavioral intervention and/or behavioral therapy schools.

5. **Mr. Bryan E. Flynn, P.E., Engineering Expert**

He will testify, among other things, to the following: that he conducted a building inspection and a photo inspection of 490 Macdonough Street, Brooklyn, NY 11233, on May 15, 2015; that the red varnish on the inside of the double sliding doors in the front room, the door and the molding to the inner hallway of the front room, the upper hinge of the closet door in the front room, the moldings in the middle hallway, and the door molding for the rear apartment entrance had damage from scratching, which was consistent with that done by a dog. He will further testify that apartment had been repaired in a sufficient manner to encapsulate and enclose the lead paint covered walls, ceilings, and floors; that the windows had been replaced to remove the fiction surfaces that could have exposed lead; the surfaces were smooth and repainted, free of defects; and that that the tenant should have notified the owner of any damages to same because the damages would not have been foreseeable to the owner.

6. **Bernard F. Lentz, Ph.D., Forensic Expert**

He will testify, among other things, to the following: that he G.M.M.'s life expectancy is 78.7 years; G.M.M.'s worklife is 38.1 years; and that G.M.M.'s future growth is 3.03% per year. He will further testify that the report by Plaintiff's Forensic Experts, SOBEL Tinari Economics Group, did not take into account the earnings capacity of G.M.M.'s parents; assumes that G.M.M. is limited to highschool education; and that the report relies on Dr.

Kenneth Reagles' report which is unreliable. Additionally, he will testify that economic losses should assume a career in Art and Design and average earnings as a college graduate.

7. Charles A. Kincaid, Ph.D., Vocational Rehabilitation Expert

He will testify, among other things, to the following: that there is a multitude of factors that may contribute to G.M.M.'s developmental disabilities including exposure to anesthesia attributable to Niki Hernandez-Adams' surgery during the first trimester, the use of hydorcodone by Ms. Hernandez-Adams during the first trimester of pregnancy, elevated levels of bilirubin in G.M.M. during early infancy, and failure to immunize G.M.M with standard vaccinations. Further, he will testify that speech therapy may help in assisting the presenting disabilities and that Dr. Reagle's report is based on limited data, and as such the future employability is inconclusive.

Dated: Brooklyn, New York
June 17, 2015



ROGER VICTOR ARCHIBALD

Attorneys for the Defendant
Roger V. Archibald, P.L.L.C.
26 Court Street, Suite 711
Brooklyn, New York 11242
Tel. No.: (718) 237-1111

TO:

STEPHEN M. CANTOR
Attorneys for the Plaintiffs
Stephen M. Cantor, P.C.
325 Broadway, Suite 502
New York, NY 10007
Tel. No.: (845) 679-6521

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**GMM, A MINOR CHILD
BY HIS MOTHER AND NATURAL GUARDIAN,
NIKI HERNANDEZ- ADAMS, AND
NIKI HERNANDEZ-ADAMS, INDIVIDUALLY**

13-CV-05059(JBW)(SMG)

**DEFENDANT'S
ANTICIPATED
WITNESS
TESTIMONY**

Plaintiffs,

-against-

MARK KIMPSON

Defendant,

-----X

**DEFENDANT'S ANTICIPATED WITNESS
TESTIMONY**

**ROGER VICTOR ARCHIBALD, PLLC
26 COURT STREET, SUITE 711
BROOKLYN, NEW YORK 11242
TEL. NO.: (718) 237-1111**